

In the Matter of License No. 37175
Issued to: MOYLE ST. CLAIRE SWIBER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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MOYLE ST. CLAIRE SWIBER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 31 October, 1951, an Examiner of the United States Coast Guard at Providence, Rhode Island, suspended License No. 37175 issued to Moyle St. Claire Swiber upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Master on board the American SS POTRERO HILLS under authority of the document above described, on or about 7 September, 1951, said vessel arrived at Swansea, Wales, with her applicable load line mark submerged contrary to 46 U.S.C. 88c (First Specification); and on or about 31 October, 1951, said vessel arrived at Providence, Rhode Island, with her applicable load line mark submerged contrary to 46 U.S.C. 88c (Second Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced evidence which included an authenticated consular report, a certified copy of an extract from the Register of the Court of Summary Jurisdiction in the County Borough of Swansea where Appellant was convicted for overloading, and the Investigating Officer's testimony concerning the Second Specification.

In defense, Appellant testified in his own behalf stating that he had never checked the plimsoll mark to determine the loaded condition of vessels but he always checked the fore and aft drafts and in this case, the mean of the latter figures did not agree with the draft indicated amidships by the plimsoll mark. Appellant thought this was due to a sag when the tanker was loaded.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner permitted a representative of the shipowner to make a statement. The Examiner then announced his findings

and concluded that the charge had been proved by proof of the specifications and entered the order suspending Appellant's License No. 37175, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months; one month outright suspension and five months' suspension on twelve months' probation from 1 November, 1951.

From that order, this appeal has been taken, and it is urged that Appellant has been going to sea since 1909 and he has loaded many oil cargoes by checking the mean of the fore and aft drafts of the ships against the ships' loading scale blueprints; and this is the first time in his experience that the fore and aft draft figures have been disregarded in favor of calculations based upon the plimsoll mark.

Concerning the First Specification, Appellant states that after departing from the loading port, he received rerouting instructions which necessitated taking aboard a greater amount of bunker oil before arriving at Swansea, Wales, than had been anticipated; and upon arrival at the latter port the mean of the fore and aft drafts was 30 feet 2.25 inches but the draft at the plimsoll mark amidships was 30 feet 5.5 inches.

With respect to the Second Specification, Appellant claims that the mean of the fore and aft drafts was 30 feet 6 inches when the ship left the loading dock at Amuay Bay, Venezuela; and that upon arrival at Providence, Rhode Island, the mean draft was 30 feet 5 inches instead of 30 feet and 1/2 inch as it should have been after five and a half days steaming. Appellant states that he has received news that the double bottom tank in the engine room was flooded with sea water before the ship reached Providence.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On voyages covering the dates of 7 September and 31 October, 1951, Appellant was serving as Master on board the American SS POTRERO HILLS and acting under authority of his License No. 37175 while said vessel was on the respective dates, on voyages which required her to put into the ports of Swansea, Wales, and Providence, Rhode Island.

The POTRERO HILLS is a tanker of 10,441 gross tons and she has a total depth of 39 feet 4.75 inches from which her freeboard and draft are measured. As shown by her plimsoll mark which is in accordance with her International Load Line Certificate, the ship is permitted a minimum amidships freeboard, in salt water, of 9 feet 2.75 inches in summer load line zones. This limits the draft at the plimsoll mark to a maximum of 30 feet 2 inches in the summer load line zones. The latter load line limits were applicable at both Swansea and Providence on the dates in question and no additional submergence for fresh water is permitted at either of these ports. In other words, the density of the water at these ports is the same as sea water and, therefore, the freeboard minimum and the draft maximum mentioned above apply.

On 7 September, 1951, the POTRERO HILLS entered King's Dock Lock, Swansea, Wales, with a full cargo of crude oil aboard. The Marine Surveyor of the port observed that the plimsoll marks indicating the summer load lines were submerged on both sides of the ship. Appellant was informed that the ship was overloaded and he was present when the Marine Surveyor and his assistant measured the freeboard on both sides of the ship in order to determine the extent of the violation. The freeboard on the port side was 8 feet 11 inches, and on the starboard side it was 8 feet 7 inches. The mean freeboard of 8 feet 9 inches was 5.75 inches less than the permissible minimum of 9 feet 2.75 inches. This meant that the mean of the port and starboard drafts amidships was 30 feet 7.75 inches which exceeded the maximum draft allowance of 30 feet 2 inches by the same amount of 5.75 inches. The mean of the fore and aft drafts which were taken by the Marine Surveyor was 30 feet 2.5 inches. Assuming that the draft markings fore and aft were accurate, the sag of the ship caused a difference of 5.25 inches between the mean drafts calculated on the basis of the amidships freeboard, and the fore and aft drafts.

Appellant was informed that the load line was submerged 5.75 inches. He stated that too much bunker oil had been loaded at Gibraltar. Appellant was arraigned for this offense before the Court of Summary Jurisdiction at Swansea on 8 September, 1951. He was represented by counsel and entered a plea of not guilty. Appellant was convicted on this charge of overloading and he was fined 600 pounds. Appellant testified at the trial that the excessive loading resulted when he was required, by a change in routing instructions from the owners, to take aboard almost double the originally scheduled quantity of bunker oil at Gibraltar; and that the draft amidships was due to a sag in the ship which could have been reduced by shifting some of the oil from the center tanks to the fore and aft end tanks. Appellant agreed with the measurements taken by the Marine Surveyor. Appellant testified that the load line was submerged 5.75 inches (instead of 1/2 inch as indicated by the fore and aft drafts) because of the ship's flexibility (which permitted a sag of as much as 6 inches) rather than due to any error in the fore and aft draft markings on the ship.

The POTRERO HILLS arrived at Providence, Rhode Island, on 31 October, 1951, loaded with fuel oil after five and a half days steaming. A Coast Guard Investigating Officer observed that the ship's load line was submerged. Accompanied by the Chief Officer of the vessel, the Investigating Officer measured the freeboard on the starboard side and found that it was 8 feet 4 inches. Since the summer load line was submerged 10.75 inches, the amidships draft was 31 feet and 3/4 of an inch. The port freeboard was not measured because the ship was on an even keel and the load line mark was practically obliterated with black oil. The mean of the fore and aft drafts was 30 feet 5 inches. Hence, the sag amidships was 7.75 inches.

OPINION

Pursuant to statutory authority (46 U.S.C. 85a, 88a), Load Line Regulations (CG 176) have been promulgated by the Commandant of the Coast Guard to provide for determining the safe loading capacity of certain merchant vessels of 150 gross tons or over and for marking such vessels. Accordingly, the qualified experts of the American Bureau of Shipping surveyed the POTRERO HILLS and issued an International Load Line Certificate which provided that her minimum freeboard in salt water should be 9 feet 2.75 inches in summer load line zones. Correspondingly,

the maximum draft allowed was 30 feet 2 inches. The Load Line Regulations state that "the load line is the line defining the maximum mean draft to which a vessel may be lawfully submerged" and "the freeboard assigned is the distance measured vertically downward at the side of the vessel amidships from the upper edge of the deck line to the upper edge of the load line" (CG 176, sec. 43.1(e), (f)).

The load lines for the various zones provided for by her International Load Line Certificate were marked upon the port and starboard sides of the POTRERO HILLS by what is commonly referred to as a plimsoll mark. These load lines indicate the drafts at which, for various conditions, there will still be left a sufficient percentage of reserve buoyancy to insure the safety of the vessel. It is unlawful for a vessel to be so loaded as to submerge the applicable markings (46 U.S.C. 85c, 88c). And since the failure to comply with these requirements might well endanger ships, cargoes, and the lives of the entire shipboard personnel, it is clear that Masters are bound to observe a very high degree of care in order to be certain that there is strict compliance with these statutes and regulations.

Appellant admits that the applicable summer load line of his ship was submerged and that the mean of the fore and aft drafts was more than the permissible maximum draft upon both of the occasions in question. But he claims that on the basis of the fore and aft drafts of the ship, the overloadings were not as great as found by the Examiner. Appellant attempts to justify the Swansea incident because he was required to carry more bunker oil than planned; and the excessive draft upon arrival at Providence is attributed to a flooded condition in the double bottom under the engine room.

As pointed out above, the controlling factor which determines the extent of the violation is the location of the applicable plimsoll load line marking relative to the waterline. Therefore, Appellant was bound to take into consideration the actual and permissible freeboard of the ship. He did not do this even though he realized that there was a possibility that the ship would sag when fully loaded.

There is substantial evidence in the record to support the findings made above, and by the Examiner, that the applicable summer load line was submerged 5.75 inches when the ship arrived at Swansea, and 10.75 inches when she put in at Providence. But both specifications would have been proven even if Appellant's figures were accepted. In his appeal, he states that the mean of the fore and aft draft was 1/4 of an inch greater than the maximum draft allowed by the Load Line Certificate and that the summer zone plimsoll mark was submerged 3.5 inches when the vessel entered the port of Swansea. He also states that at Providence the mean of the fore and aft drafts was 3 inches over the maximum allowance, and the plimsoll load line mark was 6 inches below the waterline. (The latter is based on Appellant's testimony that the draft at the plimsoll mark was 30 feet 8 inches.) Although these calculations are at considerable variance with the facts as found, they establish that viewed from the most favorable position to Appellant and based on his own figures, he was guilty of the offenses alleged in the two specifications.

Since the load line limitations provided for by the Certificate make allowance for the

minimum freeboard with which the ship may be safely navigated at sea, Appellant's failure to abide by the requirements cannot be excused simply because new routing instructions made it necessary to take aboard approximately twice the amount of originally planned bunker oil at an intermediate port after the time when the crude oil cargo had been loaded at another port.

Considering the surrounding circumstances, the offense charged in the Second Specification was the more serious. As a result of the overloading at Swansea, it was perfectly clear to Appellant that the extent of the improper loading was determined by the distance the applicable plimsoll marking was submerged; and he was also put on notice that the sag of the ship when loaded would cause the amidships draft to be deeper than a mean of the fore and aft drafts, thus causing the freeboard to be less than indicated by the fore and aft drafts. If allowance is made for the 4.5 inches difference in draft claimed to have been caused by a flooded double bottom tank, the applicable summer load line was still unlawfully submerged by more than half a foot. Necessarily, the vessel would have been even lower in the water while at sea and before arriving at Providence.

CONCLUSION

There is no doubt that there were two distinct violations of the load line requirements as alleged in the two specifications and that Appellant's failure to properly provide for the safe navigation of his ship in this respect constituted misconduct.

ORDER

The Order of the Examiner dated 31 October, 1951, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 24th day of April, 1952.